FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 392/2006
(Vinod Suryabhanji Ingale ***VERSUS*** Pravin Suryabhan Ingale & another **)**

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr.R.V.Shiralkar, Adv. for the appellants.
Mr.Panpalia, Adv. for the R-1.
Mr.Wadodkar, Adv. for R-2.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 26th July, 2007.

Heard learned counsel for the parties.

The appellant is the original defendant no. 2. A suit was filed by the respondent no.1/ plaintiff for partition and separate possession of his share in the property. According to the plaintiff, the plaintiff and the defendant no.1 had jointly purchased a plot of land by a registered sale-deed dated 24.11.1975 for a consideration of Rs.8,000/-. The defendant no. 2, the present appellant, who is the brother of plaintiff and defendant no.1 was occupying a part of the suit property. The plaintiff, therefore, sought the possession of the suit property from the defendant no.2. The defendant no.2/ present appellant filed the written statement and denied the claim of the plaintiff. It was pleaded by the appellant/defendant no.2 that the suit plot was

jointly purchased by the plaintiff, the defendant no.1 as well as the defendant no.2, however, the names of the plaintiff and the defendant no.1 were recorded in the registered sale-deed dated 24.11.1975. In the alternative, it was pleaded that the suit plot was purchased by the father of the parties in the names of the plaintiff and the defendant no.1 from the income of the joint family. There were no pleadings whatsoever about the jointness of the family or the joint income or the nucleus of the joint family in the written statement. The defendant no.1 filed the written statement and admitted the claim of the plaintiff.

On the aforesaid pleadings, the evidence was tendered. The trial Court held that the plaintiff proved that the property in question was jointly purchased by the plaintiff and the defendant no.1. The Court further held that the plaintiff proved that the defendant no.2 was unauthorisedly residing in a part of the suit property. The Court consequently decreed the suit of the plaintiff for partition and separate possession. The defendant no.2 filed an appeal against the judgment and decree passed by the trial Court. The appellate Court confirmed the findings recorded by the trial Court and passed a decree for partition and separate possession in favour of the plaintiff.

The appellate Court mainly considered the

fact that the plaintiff and defendant no.2 were in service for a number of years and were in position to purchase the property jointly in their names. The Court further observed that the defendant no.2 had just secured a degree at the relevant time of purchase of the suit property, and therefore, was not in a position to provide funds to purchase the same. The Courts held that there was no evidence to prove that the property was jointly purchased by the plaintiff and the defendants in the name of the plaintiff and the defendant no.1. The appellate Court further recorded that even if it was assumed that the father of the parties had withdrawn an amount of Rs.9,000/- just prior to the purchase of the suit property and the property was purchased for Rs.8,000/-, there was nothing on record to show that the amount of Rs.9,000/- withdrawn by the father of the parties were joint family funds and was not the self acquired property of the father. The Courts properly appreciated the material evidence tendered by the parties on record to hold that the plaintiff and the defendant no.1 were the joint owners of the suit property and the defendant no.2 had failed to prove that he had either contributed funds for the purchase of the suit property or that the property was purchased from the joint family funds. As pointed out hereinabove, there were absolutely no pleadings in the written statement of

defendant no.2 about the joint family property or the nucleus of the joint family.

The findings recorded by both the Courts are pure findings of fact which do not give rise to any substantial question of law. The second appeal is dismissed with no order as to costs.

At this juncture, Shri Shiralkar, the learned counsel for the appellant, makes a prayer that the appellant may be permitted to remain in occupation of the premises for at least a period of six months as it would not be possible for the appellant to find a new accommodation for himself in a short time. He further pointed out that in view of the rainy season, it would be necessary in the interest of justice to permit the appellant to occupy the premises for at least few more months. The prayer made on behalf of the appellant is extremely fair and reasonable. Even otherwise, the appellant is the real brother of both the respondents. The appellant is, therefore, granted a period of six months to vacate the suit premises only on the condition that the appellant furnishes an undertaking before this Court within a period of two weeks' from today that he would vacate the suit premises on or before the 31st day of January, 2008. It is made clear that the appellant would be entitled to retain possession till 31.01.2008 only if he furnishes the undertaking to the aforesaid effect

within two weeks' from today.

It is needless to mention that the execution proceedings whereby the property would be divided between the plaintiff and the defendant no.1 by metes and bounds need not be stayed merely because of the reason that the appellant is permitted to occupy the premises for six months on furnishing an undertaking.

JUDGE

APTE